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In re Application of PALUMBO et al.

Application No.: 10/500,908

PCT Application No.: PCT/EP02/14338

Int. Filing Date: 16 December 2002

Priority Date Claimed: 19 December 2001

Attorney Docket No.: D-43458-01

For: PACKAGE HAVING AN INFLATED FRAME

: DECISION ON PETITION  
: UNDER 37 CFR 1.137(b)

Applicants' "Petition For Revival Under 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office (PTO) on 07 July 2004 is GRANTED.

BACKGROUND

On 16 December 2002, applicants filed international application PCT/EP02/14338. The international application claims a priority date of 19 December 2001 and designates the United States. A copy of the international application was communicated by the International Bureau to the United States Patent & Trademark Office on 26 June 2003. The deadline for entry into the United States National Stage was thirty months from the priority date, that is 19 June 2004. The application became abandoned at midnight 19 June 2004 for failure to pay the basic national fee.

On 07 July 2004, applicants filed the instant petition for revival accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application as required by 35 U.S.C. 371(c)(2), and the petition fee of \$665.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (3) the petition fee required by law, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

Applicant's statement in the petition that "the entire delay in filing the required reply or other required action, from the due date for the reply or other action, until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirements of 37 CFR 1.137(b)(3). The submission of the national fee and the copy of the international application satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995. Therefore, the requirements for a grantable petition under 37 CFR 1.137(b) have been satisfied.

The declaration filed under PCT Rule 4.17 fails to comply with 37 CFR 1.497. The international application was filed on 16 December 2002. The declaration was executed on 15 May 2003. The declaration fails to identify the specification to which it is directed. Accordingly, the provision of 35 USC 371(c)(4) has not been met.

### CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is GRANTED as to the National Stage in the United States of America.

The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing, including the mailing of a Notification of Missing Requirements (PCT/DO/EO/905), requiring an oath or declaration of the inventors in compliance with 37 CFR 1.497 and the surcharge set forth in 37 CFR 1.492(e) are due.



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